

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283-LTS
(Jointly Administered)

**JOINT STATUS REPORT OF THE DRA PARTIES AND THE MONOLINES
REGARDING THE DRA PARTIES' MOTION TO PARTICIPATE IN THE
MONOLINES' AMENDED LIFT STAY LITIGATION
AND THE JOINT PARTICIPATION STIPULATION**

¹ The Debtors in these title III cases, along with each Debtor's respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801).

COME NOW AmeriNational Community Services, LLC (hereafter the “Servicer”), as servicer for the GDB Debt Recovery Authority (the “DRA”), and Cantor-Katz Collateral Monitor LLC, a Delaware limited liability company which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the new bonds issued by the DRA pursuant to the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017, as amended by Act No. 147-2018 and the approved Qualifying Modification for the Government Development Bank for Puerto Rico² under Title VI of the *Puerto Rico Oversight, Management and Economic Stability Act* (the “Collateral Monitor” and with the Servicer, the “DRA Parties”), pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act*, 48 U.S.C. § 2101 *et seq.* (“PROMESA”), Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp. (“AGC”), Assured Guaranty Municipal Corp. (together with AGC, “Assured”), National Public Finance Guarantee Corporation (“National”), and Financial Guaranty Insurance Company (“FGIC”, and, together with Ambac, Assured, and National, the “Monolines”), by and through the undersigned legal counsel, and respectfully submit this joint status report in response to the Court’s February 27, 2020 Order [Dkt. No. 11802].

1. On February 11, 2020, the DRA Parties filed their *Motion and Memorandum of Law in Support of Their (I) Notice That the DRA Is a Party in Interest and Can Participate in the Monolines’ Amended Lift Stay Litigation and Request to Modify the Amended Revenue Bond Scheduling Order or, (II) in the Alternative, Motion to Permit the DRA Parties to Intervene in the Monolines’ Amended Lift Stay Litigation* (the “MLS Participation Notice”) [Dkt. No. 10835], which notified the Court and other parties that the DRA Parties are parties in interest with respect to the Monolines’ Amended Lift Stay Motion and requested that the Court modify the Amended

² See Dkt. No. 270 of Civil Case No. 18-01561 (LTS).

Revenue Bond Scheduling Order (and any final revenue bonds order) to reflect this, or, in the alternative, requested entry of an order permitting the DRA Parties to intervene in the Monolines' Amended Lift Stay Litigation.

2. On February 18, 2020, the Monolines filed their *Opposition to the MLS Participation Notice* [Dkt. No. 11126], which asked the Court to deny the MLS Participation Notice or, in the alternative, to impose certain limitations on the DRA Parties' participation in the Monolines' Amended Lift Stay Motion.

3. On February 19, 2019, the DRA Parties and the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"), pursuant to the authority granted to it under the Enabling Act of the Fiscal Agency and Financial Advisory Authority, Act 2-2017, and the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board" or "FOMB"), in its capacity as representative of the Commonwealth of Puerto Rico (the "Commonwealth") and the Puerto Rico Highways and Transportation Authority ("HTA", and together with the Commonwealth, the Oversight Board and AAFAF, the "Government Parties") filed their *Notice of Joint Stipulation Regarding (I) the DRA Parties' Lift Motion; and (II) the MLS Participation Notice* (the "Participation Stipulation") [Dkt. No. 11285], in which they agreed, solely for the purpose of the Participation Stipulation, that the DRA is a party in interest to the Monolines' Lift Stay Motion and the DRA Parties possess certain limited rights to appear and be heard in connection with the Monolines' Amended Lift Stay Motion.

4. In the Participation Stipulation, the DRA Parties and the Government Parties agreed that the DRA Parties may appear and be heard in the Monolines' Lift Stay Motion as outlined in the Amended Revenue Bond Scheduling Order with respect to eight issues that the DRA Parties and the Government Parties agreed are overlapping legal issues implicated by the

DRA Lift Stay Motion and the Monolines' Lift Motion: (i) the extent to which Commonwealth statutes enacted pre-PROMESA which purport to allocate, on the terms and conditions set forth therein, certain excise tax revenues to HTA (as identified in the Monolines' Lift Stay Motion and the Oversight Board's objection, collectively, the "Excise Tax Statutes") are preempted by PROMESA; (ii) the extent to which the Excise Tax Statutes can bind future legislatures; (iii) whether the Excise Tax Statutes give rise to an equitable lien, trust, or other ownership interest in favor of the holders of bonds issued by HTA; (iv) the extent to which PROMESA Title III recognizes a priority claim arising out of the Excise Tax Statutes; (v) the scope and validity of any security interests granted to HTA bondholders pursuant to the terms of the 1968 and 1998 HTA Bond Resolutions, and whether HTA bondholders' security interests extend to tax revenues retained by the Commonwealth; (vi) whether any liens possessed by the HTA bondholders stopped attaching once the Commonwealth and/or HTA filed for relief under Title III including pursuant to Bankruptcy Code section 552(a); (vii) the validity of the Commonwealth's retention and use of the tax revenues under the Excise Tax Statutes; and (viii) whether creditors of HTA have standing to seek stay relief against the Commonwealth (the "Overlapping Issues"), subject to certain limitations on the DRA Parties' participation specified in the Participation Stipulation. Participation Stipulation [Dkt. No. 11285-1] ¶ 2.

5. On February 20, 2020, the Monolines filed their *Limited Objection to the Participation Stipulation* [Dkt. No. 11325].

6. On February 25, 2020, the DRA Parties filed their *Reply to the Monolines' Limited Objection to the Participation Stipulation* [Dkt. No. 11735] and their *Omnibus Reply in Support of Their: (I) Participation in the Monolines' Amended Lift Stay Litigation; (II) Motion to Intervene in the Revenue Bond Adversary Proceedings with Respect to the Clawback Complaint;*

and (III) Motion to Intervene in the HTA Revenue Bond Adversary Proceeding with Respect to the Lien Stripping Complaint [Dkt. No. 11725].

7. On February 27, 2020, the Court entered an order requiring the DRA Parties and the Monolines to meet and confer and file a joint status report that identifies which of the Overlapping Issues the parties agree are Shared Issues (as that term is defined in the order) on or before February 28, 2020. *See* Dkt. No. 11802 at 4.

8. The DRA Parties and the Monolines met and conferred at 4:30 pm EST on February 27, 2020 pursuant to the Court's order. AAFAF also participated in the meet and confer. The Monolines proposed amending the descriptions of certain of the Overlapping Issues. The DRA Parties requested that the Monolines propose any amendments they wish to make to the proposed Overlapping Issues so that they would be Shared Issues.

9. At approximately 5:00 pm EST on February 28, 2020, the Monolines sent proposed edits to the Participation Stipulation to the DRA Parties and AAFAF, including proposed edits to the Overlapping Issues.

10. The DRA Parties are considering the Monolines' proposed edits to the Participation Stipulation and coordinating with the Government Parties. However, the DRA Parties need more time to review and evaluate the Monolines' proposed edits, in light of the time that the same were received today. The parties will further update the Court on or before 12:00 pm EST on March 3, 2020.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, today February 28, 2020.

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